

EXHIBIT 5

Approved, SCAO

Original - Court
1st Copy- Defendant2nd Copy - Plaintiff
3rd Copy - Return

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	SUMMONS	CASE NO. 21-002775-CZ Hon. John A. Murphy		
Court address : 2 Woodward Ave., Detroit MI 48226				
Court telephone no.: 313-224-0142				
Plaintiff's name(s), address(es), and telephone no(s) City of Highland Park		v	Defendant's name(s), address(es), and telephone no(s). Menge, Brian	
Plaintiff's attorney, bar no., address, and telephone no James W. McGinnis 29323 23456 Southfield Rd Southfield, MI 48075-8016				

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.

It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035

MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court,

where it was given case number _____ and assigned to Judge _____.

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT:

In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 3/1/2021	Expiration date* 5/31/2021	Court clerk Angila Mayfield
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Cathy M. Garrett- Wayne County Clerk.

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (9/19)

SUMMONS

MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105



SUMMONS
Case No. : 21-002775-CZ

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE **OFFICER CERTIFICATE****OR** **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

I served personally a copy of the summons and complaint.

I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____

List all documents served with the Summons and Complaint

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled \$	Fee \$	
Incorrect address fee \$	Miles traveled \$	Fee \$	Total fee \$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.

Date _____

My commission expires: _____ Signature: _____ Deputy court clerk/Notary public

Date _____

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

on _____

Day, date, time _____

on behalf of _____

Signature _____

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CITY OF HIGHLAND PARK, a Municipal Corporation,

Plaintiff,

-CZ

V

BRIAN MENGE*

Defendant.

/

James W. McGinnis (P29323)
JW MCGINNIS LLC.
Attorney for Plaintiff
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Southfield, Michigan 48075
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Email: jwmlawoffices@sbcglobal.net

Some or all of the parties involved in this action
are involved in pending civil litigation arising out of
the same transaction or occurrence alleged in this
Complaint. The litigation is *Menge' v City of Highland Park*
Case No. 21-10152 in the US District Court Eastern District
of Michigan assigned to Judge Mark Goldsmith.

COMPLAINT FOR DECLARATORY RELIEF

NOW COMES Plaintiff by and through the undersigned counsel and states as follows:

1. Plaintiff, City of Highland Park, is a municipal corporation organized and operating under the law of the State of Michigan.
2. Defendant is a resident of the City of Taylor, County of Wayne, State of Michigan.
3. Defendant is a police officer employed by Plaintiff at all relevant times herein.
4. All events which are the subject matter of this action occurred in the City of Highland Park, County of Wayne, State of Michigan.

5. There is a case and controversy between the parties that the court has jurisdiction to decide. MCR 2.605.
6. This court has jurisdiction over the parties pursuant to MCL 600.701.
7. Venue is proper in this Honorable court pursuant to MCL 600.1621 and 600.1629.

General Allegations

8. Defendant Brian Menge initially gained employment with the City of Highland Parks as a patrolman.
9. After his hiring as a patrolman, in August of 2014, Officer Menge responded to a job posting for the position of detective.
10. On August 29, 2014, he wrote a letter to the Human Resources Department expressing interest in the detective position.
11. After sending the letter, he was interviewed for the position.
12. Highland Park Chief of Police Kevin Coney indicated that Officer Menge successfully passed the examination for the job.
13. On October 8, 2016, Chief Coney wrote a communication to the file indicating that Officer Menge had been promoted to detective.
14. When he moved from patrolman to detective, Officer Menge's rate of pay (or hourly rate) did not change.
15. Sometime in 2020, the City of Highland Park decided to upgrade the investigative skills of officers in the police department.
16. To meet the Police Department's training objective, the Mayor and supervisory staff in the police department decided to rotate selected police officers into the Detective Bureau for training as detectives.

17. The rotations in and out of the Detective Bureau would be temporary and would apply to all police personnel.
18. As a first step in the re-training program, Defendant Menge was rotated out of the Detective Bureau to carry out the Police Department's re-training plan.
19. Corporal Fegrues was rotated into the Detective Bureau to be trained as a detective.
20. On September 23, 2020, Sgt. James McMahon followed up on the Mayor's orders and informed Defendant Brian Menge he would be transferred to the Patrol Division effective October 4, 2020.
21. On September 24, 2020, Defendant Brian Menge's union filed a grievance challenging his so-called "demotion" to patrol.
22. On September 28, 2020, Dwight Thomas, business agent for Teamsters Local 214, sent a letter to the Mayor requesting a Veterans Preference Act ("VPA") hearing for Defendant regarding the removal of Plaintiff from the Detective Bureau.
23. Defendant Menge declared that he was a veteran who could not be transferred out of his position as a detective without prior notice and a hearing.
24. On December 10, 2020, the City of Highland Park conducted a hearing to determine if there was a violation of the VPA.
25. Defendant Menge is demanding arbitration under the Collective Bargaining Agreement ("CBA") for demotion from his position of detective without just cause. (Ex. 1)
26. On January 22, 2021, Defendant Menge filed a lawsuit against Plaintiff in the United States District Court Eastern District of Michigan (*Menge v City of Highland Park*, Case No. 21-10152)
27. In the federal court action, Defendant Menge claims that Plaintiff violated his substantive and procedural due process rights under the United States Constitution and his statutory rights to due process under the VPA.

28. Defendant Menge claims he has a property interest in continued employment as a police detective.
29. Defendant Menge claims his property interest in continued employment was abridge by Plaintiff in violation of the Fourteenth Amendment, the VPA and the CBA.
30. By law, the Mayor has the duty to see to it that the departments in the City are run efficiently.
31. The Mayor of the City of Highland Park is the chief executive of the City and the supervisor of the department heads.
32. The Mayor has the discretion to make changes in methods and processes in City departments to fulfil his responsibilities.
33. The Plaintiff has the right to determine reasonable schedules of work and to establish the methods and processes by which police work is performed.
34. It is Plaintiff's prerogative to re-assign personnel in the police department for training purposes.

Count I – Declaratory Relief

35. Plaintiff re-alleges the allegations in Paragraphs 1-34 as though fully set forth herein.
36. There is an actual case and controversy between the parties.
37. Defendant Menge is litigating the same claim of procedural due process violation in different forums.
38. Defendant Menge is attempting to litigate the same claim in multiple forums.
39. Plaintiff has a right to seek the court's assistance in avoiding multiple litigation on the same claim.
40. Declaratory relief is necessary to guide the parties' future conduct regarding the question of procedural due process.

WHEREFORE Plaintiff prays this Honorable grant declaratory and equitable relief and determine whether (1) Plaintiff violated Defendant's rights to procedural due process, (2) Defendant has a property interest in his position as a detective, and (3) Plaintiff violated the Veterans Preference Act.

/s/ James W. McGinnis [P29323]
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